

Introduced by Senator Calderon

January 28, 2009

An act to amend Sections 1812.601 and 1812.607 of the Civil Code, relating to auctioneers.

LEGISLATIVE COUNSEL'S DIGEST

SB 109, as introduced, Calderon. Auctioneers: real estate.

(1) Existing law regulates the activities of auctioneers and auction companies and requires that they maintain a bond issued by a surety company admitted in this state or an equivalent deposit. Existing law defines auction in this regard and excepts from this definition a sale of real estate or a sale of real estate with personal property or fixtures or both in a unified sale, as specified. Existing law requires auctioneers and auction companies to post or distribute to the audience the terms, conditions, restrictions, and procedures under which goods will be sold at the auction. A violation of certain of these provisions is punishable by specified fines, and a violation of these provisions generally is a misdemeanor.

This bill would remove the exception provided for real estate from the definition of auction for the purposes described above, thereby bringing real property auctions within those provisions. The bill would require an auction company and auctioneer to post or distribute to the audience a description of all fees, both refundable and nonrefundable, that will be levied on bidders, as well as any changes to those fees. With respect to auctions of real property, the bill would require an auction company and auctioneer to post or distribute to the audience a description of the reserve bid, or to inform the audience that there is not a reserve bid, prior to the beginning of the auction sale. The bill would require an auction company and auctioneer to return a refundable

deposit paid by a bidder at an auction of real property, if the bidder fails to win the auction for the property, within 2 working days. By changing the definition of a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1812.601 of the Civil Code is amended
2 to read:

3 1812.601. (a) “Advertisement” means any of the following:

4 (1) Any written or printed communication for the purpose of
5 soliciting, describing, or offering to act as an auctioneer or provide
6 auction company services, including any brochure, pamphlet,
7 newspaper, periodical, or publication.

8 (2) A telephone or other directory listing caused or permitted
9 by an auctioneer or auction company to be published that indicates
10 the offer to practice auctioneering or auction company services.

11 (3) A radio, television, or similar airwave transmission that
12 solicits or offers the practice of auctioneering or auction company
13 services.

14 (b) “Auction” means a sale transaction conducted by means of
15 oral or written exchanges, which include exchanges made in person
16 or through electronic media, between an auctioneer and the
17 members of his or her audience, which exchanges consist of a
18 series of invitations for offers for the purchase of goods made by
19 the auctioneer and offers to purchase made by members of the
20 audience and culminate in the acceptance by the auctioneer of the
21 highest or most favorable offer made by a member of the
22 participating audience. However, auction does not include either
23 of the following:

24 (1) ~~A~~ a wholesale motor vehicle auction subject to regulation
25 by the Department of Motor Vehicles.

1 ~~(2) A sale of real estate or a sale in any sequence of real estate~~
2 ~~with personal property or fixtures or both in a unified sale pursuant~~
3 ~~to subparagraph (B) of paragraph (1) of subdivision (a) of Section~~
4 ~~9604 of the Commercial Code.~~

5 (c) “Auction company” means any person who arranges,
6 manages, sponsors, advertises, accounts for the proceeds of, or
7 carries out auction sales at locations, including, but not limited to,
8 any fixed location, including an auction barn, gallery place of
9 business, sale barn, sale yard, sale pavilion, and the contiguous
10 surroundings of each.

11 (d) “Auctioneer” means any individual who is engaged in, or
12 who by advertising or otherwise holds himself or herself out as
13 being available to engage in, the calling for, the recognition of,
14 and the acceptance of, offers for the purchase of goods at an
15 auction.

16 (e) “Employee” means an individual who works for an employer,
17 is listed on the employer’s payroll records, and is under the
18 employer’s control.

19 (f) “Employer” means a person who employs an individual for
20 wages or salary, lists the individual on the person’s payroll records,
21 and withholds legally required deductions and contributions.

22 (g) “Goods” means any goods, wares, chattels, merchandise, or
23 other personal property, including domestic animals and farm
24 products.

25 (h) “Person” means an individual, corporation, partnership,
26 trust, including a business trust, firm, association, organization, or
27 any other form of business enterprise.

28 SEC. 2. Section 1812.607 of the Civil Code is amended to
29 read:

30 1812.607. Every auction company and auctioneer shall do all
31 of the following:

32 (a) Disclose his or her name, trade or business name, telephone
33 number, and bond number in all advertising of auctions. A first
34 violation of this subdivision is an infraction subject to a fine of
35 fifty dollars (\$50); a second violation is subject to a fine of
36 seventy-five dollars (\$75); and a third or subsequent violation is
37 subject to a fine of one hundred dollars (\$100). This section shall
38 not apply to business cards, business stationery, or to any
39 advertisement that does not specify an auction date.

(b) Post a sign, the dimensions of which shall be at least 18 inches by 24 inches, at the main entrance to each auction, stating that the auction is being conducted in compliance with Section 2328 of the Commercial Code, Section 535 of the Penal Code, and the provisions of the California Civil Code. A first violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50); a second violation is subject to a fine of seventy-five dollars (\$75); and a third or subsequent violation is subject to a fine of one hundred dollars (\$100).

(c) Post or distribute to the audience the terms, conditions, restrictions, and procedures whereby goods will be sold at the auction, *and a description of all fees, both refundable and nonrefundable, that will be levied on bidders*, and announce any changes to those terms, conditions, restrictions, ~~and~~ procedures, *and fees* prior to the beginning of the auction sale. A first violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50); a second violation is subject to a fine of one hundred dollars (\$100); and a third or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(d) With respect to auctions of real property, post or distribute to the audience a description of the reserve bid, or inform the audience that no reserve is to be applied, prior to the beginning of the auction sale.

~~(d)~~
(e) Notify the Secretary of State of any change in address of record within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

~~(e)~~
(f) Notify the Secretary of State of any change in the officers of a corporate license within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

~~(f)~~
(g) Notify the Secretary of State of any change in the business or trade name of the auctioneer or auction company within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

~~(g)~~
(h) Keep and maintain, at the auctioneer's or auction company's address of record, complete and correct records and accounts

1 pertaining to the auctioneer's or auction company's activity for a
2 period of not less than two years. The records shall include the
3 name and address of the owner or consignor and of any buyer of
4 goods at any auction sale engaged in or conducted by the auctioneer
5 or auction company, a description of the goods, the terms and
6 conditions of the acceptance and sale of the goods, all written
7 contracts with owners and consignors, and accounts of all moneys
8 received and paid out, whether on the auctioneer's or auction
9 company's own behalf or as agent, as a result of those activities.
10 A first violation of this subdivision is a misdemeanor subject to a
11 fine of five hundred dollars (\$500); and a second or subsequent
12 violation is subject to a fine of one thousand dollars (\$1,000).

13 ~~(h)~~

14 (i) Within 30 working days after the sale transaction, provide,
15 or cause to be provided, an account to the owner or consignor of
16 all goods that are the subject of an auction engaged in or conducted
17 by the auctioneer or auction company. A first violation of this
18 subdivision is a misdemeanor subject to a fine of five hundred
19 dollars (\$500); and a second or subsequent violation is subject to
20 a fine of one thousand dollars (\$1,000).

21 ~~(i)~~

22 (j) Within 30 working days after a sale transaction of goods,
23 pay or cause to be paid all moneys and proceeds due to the owner
24 or the consignor of all goods that were the subject of an auction
25 engaged in or conducted by the auctioneer or auction company,
26 unless delay is compelled by legal proceedings or the inability of
27 the auctioneer or auction company, through no fault of his or her
28 own, to transfer title to the goods or to comply with any provision
29 of this chapter, the Commercial Code, or the Code of Civil
30 Procedure, or with any other applicable provision of law. A first
31 violation of this subdivision is a misdemeanor subject to a fine of
32 one thousand dollars (\$1,000); a second violation is subject to a
33 fine of one thousand five hundred dollars (\$1,500); and a third or
34 subsequent violation is subject to a fine of two thousand dollars
35 (\$2,000).

36 ~~(j)~~

37 (k) Maintain the funds of all owners, consignors, buyers, and
38 other clients and customers separate from his or her personal funds
39 and accounts. A violation of this subdivision is an infraction subject
40 to a fine of two hundred fifty dollars (\$250).

1 ~~(k)~~

2 (l) Immediately prior to offering any item for sale, disclose to
3 the audience the existence and amount of any liens or other
4 encumbrances on the item, unless the item is sold as free and clear.
5 For the purposes of this subdivision, an item is “free and clear” if
6 all liens and encumbrances on the item are to be paid prior to the
7 transfer of title. A violation of this subdivision is an infraction
8 subject to a fine of two hundred fifty dollars (\$250) in addition to
9 the requirement that the buyer be refunded, upon demand, the
10 amount paid for any item that is the subject of the violation.

11 ~~(l)~~

12 (m) Within two working days after an auction sale, return the
13 blank check or deposit of each buyer who purchased no goods at
14 the sale, *or return a refundable deposit paid by a bidder at an*
15 *auction of real property, if the bidder fails to win the auction for*
16 *the property*. A first violation of this subdivision is an infraction
17 subject to a fine of one hundred dollars (\$100); and a second or
18 subsequent violation is subject to a fine of two hundred fifty dollars
19 (\$250).

20 ~~(m)~~

21 (n) Within 30 working days of any auction sale, refund that
22 portion of the deposit of each buyer that exceeds the cost of the
23 goods purchased, unless delay is compelled by legal proceedings
24 or the inability of the auctioneer or auction company, through no
25 fault of his or her own, to transfer title to the goods or to comply
26 with any provision of this chapter, the Commercial Code, or the
27 Code of Civil Procedure, or with other applicable provisions of
28 law, or unless the buyer violated the terms of a written agreement
29 that he or she take possession of purchased goods within a specified
30 period of time. A first violation of this subdivision is an infraction
31 subject to a fine of one hundred dollars (\$100); and a second or
32 subsequent violation is subject to a fine of two hundred fifty dollars
33 (\$250).

34 SEC. 3. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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